IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 842 of 2005
FROM
SUMMONS FOR JUDGEMENT NO. 985 OF 2003
IN
SUMMARY SUIT NO. 2869 OF 2003

N. Ramchandra Bhatt .. Appellant
versus
Babita Rajaram Sahu .. Respondent

...

Mr.Naushad Engineer i/b Zohair & Co. for the appellant.

Mr.J.S. Kini for the respondent.

CORAM : R.M. LODHA AND

D.G. KARNIK, JJ

DATED : 18th November 2005.

P.C.:

Heard Mr.Naushad Engineer, the learned counsel for the appellant.

2. The learned trial Judge considered the matter thus :

> "The only defence raised by the defendant is that the cheque was infact stolen from their house by breaking open the Almari. It is an admitted position that for the first time a complaint was filed in respect of the stolen cheque on 3.10.2002. Though there was an earlier complaint on

> 28.7.2002 of breaking open the almari there was no complaint of the cheque being stolen raised therein. It is also an admitted position that the cheque was dishonoured on 17.8.2002 and a criminal complaint was filed by the plaintiff u/s.138 of the Negotiable Instruments Act r/w sec.420 of I.P.C. and the summons were served on the defendants on 25.9.2002. Obviously it is only thereafter that a purported complaint dated 3.10.2002 is filed so as to escape from the liability of the amount due and payable under the said dishonoured cheque."

3. We concur with the consideration of the matter by the learned trial Judge and find no justifiable ground to interfere with the impugned order.

4. Appeal is dismissed in limine.

5. In the interest of justice, we grant further time of four weeks to the defendant to deposit the amount as ordered in the impugned order failing which the consequences ordered in the order dated 17th August 2005 shall come into operation.

R.M. LODHA, J

D.G. KARNIK, J